

OPINION
50-94

July 3, 1950 (OPINION)

JUSTICE COURT

RE: Payment of Fines and Costs

This is in reply to your letter of June 29 relative to section 33-1233 of the North Dakota Revised Code of 1943.

Your question is whether a justice of the peace in finding a person guilty and imposing a fine may in addition thereto require the defendant to pay costs.

Section 33-1233 provides that, "When in a criminal action the fine is paid, the justice must apply the money in payment of the legal costs and expenses of the prosecution and pay over the residue, if any, to the county treasurer."

You refer to the case of State v. Kilmer, 31 N.D. 446 in which the court holds that the costs are a part of the fine. You also refer to the case in re Salhus, 63 N.D. 238 in which the court held that there could be no imprisonment for nonpayment of fine where a jail sentence also had been imposed. In that case the justice had imposed a fine of \$100 plus costs.

In this case, the question raised by the petitioner made no reference to the cost, probably because the amount of the costs was small. The point involved was whether a defendant who was convicted and given a fine and a jail sentence could be imprisoned in default of payment of a fine.

In view of the specific language of section 33-1233 and the decision in the case of State v. Kilmer, supra, it would be my opinion that a justice may not require the defendant to pay the costs where he has already imposed a fine.

ELMO T. CHRISTIANSON

Attorney General